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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200223
Party	Plaintiff Flame & Wax, Inc.
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Date	05/04/2012
Attachments	2012-05-04 Stipulation for Introduction of Direct Testimony during Trial Testimony Periods.pdf (4 pages)(44441 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

FLAME & WAX, INC.,

Opposer,

v.

LAGUNA CANDLES,

Applicant.

Opposition No. 91200223

Serial No. 85/137,006

Regarding the Mark: Laguna Candles

**STIPULATION FOR INTRODUCTION OF
EVIDENCE AND DIRECT TESTIMONY
DURING TRIAL TESTIMONY PERIODS**

TO THE TRADEMARK TRIAL AND APPEAL BOARD:

Pursuant to Trademark Rules of Practice 2.122 and 2.123(b) and T.B.M.P. §§ 704.11 and 705, Opposer/Plaintiff Flame & Wax, Inc. and Applicant/Defendant Laguna Candles, through their undersigned counsel, stipulate as follows:

I. Documents

(A) Documents produced by a party in responses to requests for production of documents or interrogatories shall be deemed authentic business records. Objections to the admissibility of such documents on grounds of authenticity or genuineness are waived. All other objections are preserved.

II. Testimony

(A) The direct testimony of all witnesses shall be introduced solely by sworn declaration or affidavit with exhibits attached thereto, in lieu of live deposition. All sworn declarations shall be served via email (without exhibits) to all counsel of record and via overnight Federal Express (with exhibits) on opposing counsel no later than 21 days after the opening date of each party's respective testimony periods. Failure to timely serve direct testimony shall result in the forfeiture of rights to submit the testimony.

(B) The party receiving a declaration retains the right, upon appropriate notice, to cross-examine the witness by deposition upon oral examination at the office of the witness or his/her counsel, telephonically, or by another mutually agreed upon method and location. In lieu of oral examination, cross-examination may be conducted by written questions or declaration upon agreement of the parties.

If a party seeks cross-examination it shall notify the witness' counsel within 5 business days of receipt of the sworn declaration that cross-examination is sought and the witness must be made available for such purposes.

If a witness is unavailable for cross-examination during the remainder of the trial period following service of the sworn declaration, such cross-examination may be conducted after the expiration of the respective testimony period and the parties waive any right to object on the grounds that the cross-examination is not timely.

Counsel for the witness being cross-examined shall have the right to conduct a re-direct examination following completion of the cross-examination. A transcript from such live deposition shall be entered in the record, even after expiration of the parties' testimony periods.

(C) In connection with Opposer's 15-day rebuttal testimony period, Opposer shall serve in the same manner in which it served its direct testimony any sworn declarations and exhibits in lieu of live deposition no later than 12 days after the opening date of the rebuttal testimony period.

If Applicant seeks cross-examination of the witness it shall notify Opposer's counsel within 5 business days of receipt of the sworn declaration. Cross-examination shall occur as set forth in paragraph (B) above.

If a witness is unavailable for cross-examination during the remainder of the rebuttal testimony period following service of the sworn declaration, the parties will agree that such cross-examination can be conducted after the expiration of the rebuttal testimony period.

A transcript from such live deposition shall be entered in the record, even after expiration of the parties' testimony periods.

(D) If a party cross-examines a witness by any means, then the cross-examining party shall bear the costs associated with court reporting, transcription, and filing of any testimony, and shall further be responsible for ensuring in the case of a deposition (i) that any deposition transcript complies with all applicable form requirements of the Trademark Rules of Practice and (ii) that such transcript is filed in accordance with the Trademark Rules of Practice.

Failure of a cross-examining party to file the transcript or other cross examination in accordance with the Trademark Rules of Practice or this stipulation shall have no effect on the admissibility of the direct testimony provided that such direct testimony is duly and properly filed.

(E) If a party proffers a sworn declaration from an expert witness as testimony-in-chief or as rebuttal testimony, to the extent the non-introducing party seeks to cross-examine the expert, the fees charged by said expert-including the fees charged in connection with his/her cross-examination testimony shall be paid by the party proffering the expert's sworn declaration.

IT IS SO STIPULATED.

Respectfully submitted,

Dated: May 4, 2012

s/David A. Bernstein/
David A. Bernstein
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Attorney for Opposer/Plaintiff
Flame & Wax, Inc.

Dated: May 4, 2012

s/Kevin M. Welch/
Kevin M. Welch
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Attorney for Applicant/Defendant
Laguna Candles

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the attached document entitled **STIPULATION FOR INTRODUCTION OF EVIDENCE AND DIRECT TESTIMONY DURING TRIAL TESTIMONY PERIODS** was served on Defendant by electronically mailing said copy on May 4, 2012 to Applicant/Defendant's counsel, Kevin Welch, at *kevin@kmwlawoffice.com*.

/David A. Bernstein/
David A. Bernstein
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